

New Mexico 's Voluntary Remediation Program

- Designed to Assist Owners and Purchasers of contaminated sites
- Resolves Issues of Environmental Contamination That Might Otherwise Impede Sale and/or Redevelopment of a Property



Voluntary Remediation Program Benefits

- Streamlined regulatory process
- Specialized attention from NMED staff
- Lenders released from liability
- Certificate of Completion or Conditional Certificate of Completion when work is completed
- Covenant-Not-to-Sue to purchaser or site owner that was not the polluter

Voluntary Remediation Program Timeline

- ❖ March 21, 1997 Voluntary Remediation Act Passed
- ❖ July 15, 1999 Voluntary Remediation Regulations Promulgated
- ❖ March 20, 2000, first VRP site closure documents issued





Voluntary Remediation Program

Current Status

❖ Sites that have applied	34
❖ Completion Certificates issued	14
❖ Covenants-Not-To-Sue issued	10
❖ Sites currently in the program	20



Voluntary Remediation Program

The Process

- ❖ Application process
- ❖ Eligibility issues
- ❖ Voluntary Remediation Agreement
- ❖ Site closure requirements
- ❖ Closure documentation



Voluntary Remediation Program

Application Process

- ❖ Application form, including a “Declaration of Ability and Intent”
- ❖ Current Phase I ESA that conforms with ASTM Practice E 1527 (or equivalent)
- ❖ Preliminary work plan
- ❖ Written consent from the property owner, if applicant is not the property owner, supporting the application, including the potential future restrictions on property use
- ❖ Application fee -\$1,000 and hourly rate (\$65) for oversight costs (Costs for municipalities are waived)



Voluntary Remediation Program

Site/Applicant Eligibility

- ❖ Ineligible Sites: Sites on NPL, administrative enforcement order in place, or an active permit
- ❖ Has the applicant within 10 years immediately preceding the date of submission of the application:
 - ❖ Knowingly misrepresented material fact in an application for a permit or plan submitted pursuant to state environmental laws?
 - ❖ Refused or failed to disclose any material information required by the VRA? Exhibited a history of willful disregard for environmental laws of any state or of the United States?
 - ❖ Had an environmental permit revoked or permanently suspended for cause pursuant to provisions of environmental laws of any state or of the United States?



Voluntary Remediation Program

Site/Applicant Eligibility

❖ Examples of willful disregard:

- ❑ Individual convicted of an environmental crime
- ❑ Repeated notices of violation, with no record of the applicant addressing the environmental issues of concern
- ❑ Documentation of intentional dumping or illegal disposal that has occurred in the last 10 years.



Voluntary Remediation Program

Site/Applicant Eligibility

- ❖ Do the contaminants at the site constitute, with reasonable evidence, an unreasonable threat to human health or the environment or Native American cultural or religious sites?

Examples:

- ☐ Ground water impact within the capture zone of a drinking water supply well?
- ☐ Critical habitat for an endangered species is on site or nearby and has been impacted by contamination at the site?
- ☐ Threat of fire or explosion, including the presence of explosive vapors?
- ☐ Sites where exposure potential is great enough to require that site characterization or remediation be performed in Level A or B personal protective equipment ?
- ☐ Known presence of Indian burial or archaeological sites?



Voluntary Remediation Program

Eligibility Determination

Sites where remedial actions have been or are currently being handled under other NMED programs:

- ❑ Site must meet VRP risk based performance standard
- ❑ Applicant may need to perform additional site assessment or remediation work for VRP
- ❑ VRP may or may not take the lead, depending upon situation and other regulatory agency



Voluntary Remediation Program

Voluntary Remediation Agreement

Defines:

- ❖ Type(s) of contamination covered by the agreement
- ❖ Boundaries of property specified
- ❖ Site access
- ❖ Deliverables and submittal schedule
- ❖ Enforcement shield
- ❖ Termination



Voluntary Remediation Program

Public Involvement

- ❑ Make the voluntary remediation agreement and preliminary work plan available for inspection within reasonable proximity of site
- ❑ Must notify potentially interested parties via correspondence
- ❑ Must notify general public with sign posted at site
- ❑ Must advertise in local and statewide newspaper
- ❑ Public can submit written comments or a request for a public meeting.



Voluntary Remediation Program

Site Closure Requirements

- ❖ NMED uses Phase I ESA to determine if additional work is necessary
- ❖ Risk Assessment
 1. Comparison to standards (groundwater) or Tier 1 Soil Screening Guidelines (NMED, Dec. 2000), or
 2. Perform site specific risk assessment
- ❖ Final Work Plan
 1. Source characterization
 2. Identify media of concern and migration pathways
 3. Nature and extent of contamination
 4. Identify remedial alternatives and selected alternative



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Site Closure Scenarios

- ❖ Case for no additional clean up required
- ❖ Demonstration of “background concentrations”
- ❖ Innocent landowner cases
- ❖ Existing contamination - clean up soil to a level that is protective of human health and/or clean up ground water to an existing New Mexico ground water standard
- ❖ NMED will make determination on a case by case basis about non-residential use



Voluntary Remediation Program

Certificate of Completion

- ❖ Final Voluntary Remediation Completion Report required
- ❖ Determination that the participant (applicant) has successfully complied with the Voluntary Remediation Agreement
- ❖ Specific to the type of contamination and media assessed
- ❖ Tied to a specific tract of land/runs with land
- ❖ Specifies that purchaser or innocent party is entitled to a Covenant Not to Sue



Voluntary Remediation Program

Conditional Certificate of Completion

- ❖ Cases where the final site remedy is dependent upon post-closure care, maintenance of engineering controls, remediation systems, and/or affirmation of future nonresidential land use
- ❖ NMED audits at a minimum every other year for the first ten years,... and every 5 years thereafter
- ❖ If during an audit, NMED finds that engineering controls, monitoring requirements, remediation, post closure care or affirmation of future non-residential use not being maintained the certificate may be revoked and an enforcement action initiated



Voluntary Remediation Program

Covenant Not To Sue

- ❖ Transferable to future purchasers
- ❖ Liability protection - Based upon NMED authority
- ❖ Rescission –
 - ❑ Conditional Closure requirements have not been implemented satisfactorily
 - ❑ There is contamination, unknown at the time of the agreement, that is not included in the agreement
 - ❑ False, misleading or incomplete representations and warranties



For More Information

- Web page:
<http://www.nmenv.state.nm.us/gwb/vrp.html>
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